

# Court of Appeals, State of Michigan

## ORDER

People of MI v Miguel Diaz

Docket No. 280753

LC No. 98-066617-FH

Richard A. Bandstra  
Presiding Judge

Michael R. Smolenski

Jane M. Beckering  
Judges

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Pursuant to MCR 7.205(D)(2), in lieu of granting the application for leave to appeal, the Court orders that the decision of the trial court granting defendant relief from judgment is PEREMPTORILY REVERSED and that the August 30, 2007 order effectuating the trial court's decision is VACATED. The trial court erred as a matter of law when it presumed prejudice and abused its discretion in granting relief where defendant failed to establish that an actual conflict of interest adversely affected his lawyer's performance. *People v Smith*, 456 Mich 543, 556-557; 581 NW2d 654 (1998). This order has immediate effect. MCR 7.215(F)(2). We do not retain jurisdiction.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

OCT 23 2007  
Date

*Sandra Schultz Mengel*  
Chief Clerk